

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

MFA.No. 622 of 1998(D)

WCC.110/1995 of COMMISSIONER FOR WORKMEN'S COMEPNATION,
THIRUVANANTHAPURAM.
.....

APPELLANT:

1. THE GENERAL MANAGER,
SOUTHERN RAILWAY
PARK TOWN P.O., MADRAS - 3.

2. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY,
THIRUVANANTHAPURAM.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS
SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:

R.SUBRAMANIAN,
S/O.K.RAMAN,
CARE TAKER/MECHANICAL
OFFICE OF THE ASSISTANT LOCO FOREMAN,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM - 23.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.JOSE THETTAYIL
SRI.MARTIN G.THOTTAN
SRI.T.S.RAJAN, SC, RAILWAYS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 622 of 1998

Dated this the 22nd June, 2007.

J U D G M E N T

Respondents, the opposite party, in W.C.C.No.110/1995, on the file of the Commissioner for Workmen's Compensation, Thiruvananthapuram, are the appellants in this appeal. The respondent was working as a Carriage and Wagon Fitter Grade II, in the office of the Assistant Loco Foreman, Southern Railway. On 9.2.1992, he sustained an employment injury. He filed a petition claiming compensation under Section 22(2) of the Workmen's Compensation Act, in short 'the Act'. At the time of the accident, he was working as Carriage and Wagon Fitter Grade II, in the scale of pay of Rs.1200-1800. Subsequently, he was reverted to the post of care taker in the scale of Rs.950-1500/=.

2. The appellants contested the matter. It is contented that there was a delay in filing the petition for claiming compensation, and the amount claimed was excessive. The Workmen's Compensation Court held that there was sufficient reason to condone the delay, and the delay was condoned. On evidence, the

Commissioner found the respondent was the employee of the appellant and the accident occurred in the course of his employment, and hence, he is entitled to get the compensation. The Commissioner calculated the compensation due to him as follows:-

$$\frac{2000 \times 60 \times 20 \times 169.44}{100 \times 100} = 40,665/=.$$

The salary of the petitioner was taken as Rs.2000/= and his loss of earning capacity was assessed to 20% basing on the report of the medical board. The court has not considered the statutory provisions on these aspects. The accident occurred on 9.2.1992. As per the explanation 2 to Section 4(1) of the Act, at the relevant time, the Workmen Compensation Court can take only Rs.1000/= as the monthly wages, for cases covered by clause (a) and (b) of the Act. That provision was amended on 8.12.2000, by which the amount of monthly wages was substituted as Rs.2000/=. The interest payable under Section 4A(3)(a) of the Act was only 6%. It is seen that at the relevant point of time, before the amendment in 1995, the loss of vision of one eye, without complications, the other being normal, was a compoundable injury, and the disability was fixed as 30%. The Commissioner has not considered whether on account of the amendment, right which accrued to the party can be taken away.

Hence, I have no other option but to set aside the order passed by the Commissioner, and direct him to consider the quantum of compensation due to the petitioner alone, in accordance with the provisions, which stood prior to 15.9.1995. For that limited purpose alone, the case has to go back.

3. In the result, the appeal is allowed in part. The finding of the Workmen's Compensation Court, that the respondent has sustained employment injury and entitled to get compensation is confirmed. But the matter is remanded for the limited purpose of re-calculating the amount due to the workmen, in accordance with the statutory provisions, which exist prior to 15.9.1995.

4. Parties shall appear before the court below on 25.7.2007.

C.M.P.No.6242/1998 in M.F.A.No.622/1998 is dismissed.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.622 of 1998

J U D G M E N T

Dated: 22nd June, 2007.
